

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY Case No. 01-45022

MF Bank & Company, Inc.,

Chapter 7

Debtor.

Brian F. Leonard, Trustee,

ADV Case No. _____

Plaintiff,

v.

**ADVERSARY
COMPLAINT**

Firemans Fund Insurance Company,

Defendant.

For his Complaint in this Adversary Proceeding, the above Plaintiff states and alleges as follows:

1. The Debtor filed its Petition under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court, District of Minnesota, on November 17, 2001 (the "**Petition Date**").
2. The Plaintiff is the duly appointed, qualified, and acting Chapter 7 Trustee of the Debtor's bankruptcy estate.
3. The Firemans Fund Insurance Company (the "**Defendant**") is a corporation engaged in the business of, among other things, issuing insurance policies for workers' compensation coverage to commercial customers.

4. The Debtor was a corporation doing business in several areas of the United States. From the mid-1980s to 1991, the Debtor self-insured its workers' compensation plan with a Retrospective Rating Plan issued by the Defendant (the "**Plan**"). Under the Plan, premiums were paid by the Debtor to the Defendant. Each year, based upon a recalculation of actual and expected claim costs, the Premiums were increased or decreased. On May 1, 2001, the Defendant recalculated the premiums due from the Debtor, and issued an invoice to the Debtor in the amount of \$24,270.00. The Debtor objected to the invoice, and contested the payment thereof.

5. On or about October 12, 2001, the Debtor issued Check No. 267145 in favor of the Defendant in the amount of \$24,270.00 (the "**Transfer**").

6. The Transfer (1) was to the Defendant who was a creditor of the Debtor, (2) was made an account of an antecedent debt, (3) was made while the Debtor was insolvent, (4) was made within 90 days before the Petition Date, and (5) enabled the Defendant to receive more than it would have if the Transfer not been made and the Defendant received payment on its debt to the extent provided by the provisions of Title 11 of the United States Bankruptcy Code.

7. The Transfer is avoidable under 11 U.S.C. § 547.

8. The Defendant is liable to the Plaintiff for a return of the Transfer under 11 U.S.C. § 550(a)(1).

WHEREFORE, the Plaintiff respectfully requests that the Court grant him judgment against the Defendant in the amount \$24,270.00, plus interest from and after October 12, 2001, and for such other and further relief as is just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: September 29, 2003

By /s/ Brian F. Leonard
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